(22) 6.

A Letter from a Justice of Peace TO A Counsellor at Law CONCERNING CONVENTICLES, With the Counsellors Reply.

IR,

ince I had the Honour of serving his Majesty in his Commission of the Peace for this County, I have not met with that danger and difficulty as hath lately occur'd, which compels me to crave your judicious Counsel and Advise. On *Monday* last, two persons (of insolent behaviame to my House, stiling themselves Informers; these make Oath, that y before at a private House, in a neighbour Village, were assembled sepersons, above the number of four, beside the Family, where was held a nticle or Religious Exercise, contrary to the Tenor of the late Act, and informers conjure me under the Penalty of 100 l. to Record the offence, leavy the Fines accordingly; whereupon I sent for the Persons accud having them and the Informers face to face, I demanded whether would own themselves guilty of a Conventicle within that Act; They themselves present at a Religious Exercise, but deny it to be in other than according to the Liturgy and Practise of the Church of *England*; y they) we profess the same Faith with the Church of *England*, Preach intain the same Doctrine, Worship the same God through the one Meand by his Spirit; We admit persons of all Ages and Sexes to our ly, (a practice incompatible with Plots.) Whereupon I demanded of ormers, (being upon their Oath) whether they could safely Swear, In That this was, **A pretended colourable Religious Exercise, in other than according to the Liturgy and Practice of the Church** of England; hal cautioned them to consider, that if they Swore the Affirmative, ust necessarily know, what the Liturgy is, what the Church of *England*

is, and what its Practice is, unto all which the Informers were able to give no other answer than this, That in as much as the Meeting was not in a Church or place of publick Worship, and no Common-Prayer read, (as they heard) this they took to be a Conventicle within that Act. Lastly, (at the request of the Defendants) I demanded of the Informers, whether they were present from the beginning to the end of the Exercise, to which they answered Negatively. Sir, seeing the Act giveth me three Months time to deliberate of this Matter, I dismissed both parties, and here send you the Case with your Fee, and crave your Opinion, Whether the Defendants are within this Statute as the Evidence stands? I am, Sir,

Your humble Servant.

Phanatick?

The Answer.

SIR,

I Received your Letter and Fee, and for as much as the Determination of the Case proposed, depends upon our Knowledge of the genuine sense of the late Statute against Conventicles, I have studiously endeavoured to satisfie my own and your understanding, by considering, first the Title, secondly the Preface, and thirdly the Body of the Act, and do herewith offer you my Disquisition of the whole.

I. Of the Title, in these words, **An Act to prevent Seditious Conventicles.** Sir, The men of my Profession do generally say, that Titles of Acts are **Clavis Legum**, and serves as contents to a Chapter: Now Sir, if you compare your Evidence with this Title, I find nothing of **Sedition** so much as suggested, much less proved.

Let it also be considered, that this Kingdom hath been Blessed with famous and worthy Justices of the Law, such as ever abhor'd harsh and severe Interpretations of Laws, especially where the Property and Liberty of the Subject hath been concerned: And though this Act tells you, that it must be construed, **Most largly and beneficially for the suppressing of Conventicles**, yet you (knowing what the words import) may not thence take Liberty to make any Conventicle a Crime which the Act doth not make so.

Wherefore my opinion is upon the Title of the Act, and Evidence of the matter, the Defendants are not within the Act.

II. We now proceed to the Prefatory part of the Act, in these Words, **For providing more speedy Remedy against the growing and dangerous practice of Seditious Sectaries, and other disloyal Persons, who under a pretence of tender Consciences, have or may at their Meeting, contribe Insurrections as late Experience hath shewn.**

We must now compare this Preface with the Evidence, as it is offered in your Case, The Defendants in presence of the Informers, profess the Faith and Doctrine established in the Church of *England*, Worship the same God, admit persons of all Ages and Sexes, which (say they) is incompatible,

&c. and all this the Informers ſeems to confeſs, at leaſt give no Evi-
ence to the contrary; and it is a known Axiom in Law and Reaſon, De non
entibus et non exiſtentibus eadem ratio; Wherefore I conclude the De-
dants are not within the Preface of the Act.

III. But thirdly, it muſt be granted, that though neither the Title nor the
face of (the Act) do reach the Defendants, yet the Body of the Act may,
e words- That if any perſon or perſons, above the Age of 16 years, &c.
ll be preſent at any Aſſembly, Conventicle, or Meeting, under colour or pre-
ce of any Exercise of Religion, in other manner than according to the Li-
y and practiſe of the Church of England, &c. where there ſhall be five or
re perſons Aſſembled over and above thoſe of the Houſhold, &c.

Sir, I dare be poſitive in my Opinion, That if theſe words do not reach the
fendants, no part of the Act doth, wherefore every part of them deſerves
ine conſideration; And firſt of theſe, Whoſoever ſhall be preſent at any
embly, &c. under colour or pretence of any Exercise of Religion, &c.

To my utmoſt underſtanding there can but two ſences be put upon theſe
ds,

Firſt, either a real truly Chriſtian Exerciſe of Religion, which yet cannot
without its pretence and colour any more than the falſe one. or,

Secondly, ſuch an Exerciſe of Religion as carrieth only a pretence and co-
, without Truth and Sincerity.

Our enquiry muſt be in which of theſe two ſences to interpret theſe words
e Act, and firſt of the firſt of theſe.

Whether theſe words can be conſtrued as intending to puniſh a real truly
ſtian Exerciſe of Religion.

Of this I ſhall firſt give you my Opinion, and then my Reaſon. My Opi-
is, the words cannot with Reaſon and Charity be ſo underſtood;

My reaſon is, becauſe I ſuſpect that ſuch an Interpretation would make
Statute a nullity in its ſelf; for that all Caſuiſts, Lawyers, and Divines,
agree, that every Law made againſt the Law of God, is null (Ipſo facto)
any obligation of Conſcience.

Now to demonſtrate that this ſence is contrary to the Law of God, let us
read the words according to this conſtruction and they would run thus,
ny perſon or perſons, above the number of four, ſhall worſhip God truly and
erly in other manner &c. ſhall incur the Penalty of the Act. If the Act
oken thus Pervted, I leave it to your Judgment how harſh it would ſeem
ery Chriſtian Ear, even the Legiſlators themſelves.

nd now conſider how it will agree with theſe Scriptures following, 1 *Tim.*
will therefore that men Pray every where, for number and place indefinite,
18. 30 31. *And* Paul *dwelt two whole years in his hired houſe, and received all*
ame to him, Preaching the Kingdom of God, no man forbidding him. Mark 2.
And it was noiſed that he was in the houſe, and ſtraight many were gathered to-
r, inſomuch as there was no Room for them.

Sir, having personal Knowledge of your Loyalty to your Prince, and Rev
rence to his Laws, I have great reason to conclude, that you will abhor to i
terpret the sence of this Branch of the Statute, that it intends to punish tr
and sincere Religion where-ever Exercised; nor can the number, more
less, give any turpitude or innocency; for if the Worship in it self be Evil,
is intollerable in Four, if good, fourscore cannot make it Evil: Wherefo
we having but our choice of two Interpetations, (it being beyond my rea
to conceive a third;) we are constrained to take the second sense premise
which is agreeable not only to the Letter of the Law, but consonant to tr
Reason and Religion, and then our result must be, that this clause of t
Act, (compared with the Preface) intends to punish such, as under colour
pretence, (as opposed to true and sincere Religion) do or may meet to co
trive Insurrections.

Sir, having now, I hope, truly discovered the crime intended by this A
it now remain we examin, whether the Evidence offer'd, will be found
Kindred hereunto, so as to make the Defendants guilty of the Crime, and
consequently to incur the Penalty, I think it beyond contradiction, that
lour or pretence, as opposed to Truth and sincerity, none but the Omni
ent God can take cognizance of, otherwise than by Overt Acts, discover
the falsehood of the mind, so that if the Informers had sworn (as I find no
that the Defendants met under colour or pretence, and give no evidence
Fact, either of false Doctrine, or Seditious words, or contrivances tend
to Insurrections, the Law hath no cogency on your conscience to credit
Evidence: If you consider the words of the Act, (**Do or may contribe Ins
rections, as Experience shews**, and thence gather, that though no Evide
evince that they did, yet at such Meetings, Insurrections may be contriv
I answer, no experience of any time or age gives instance, that such wic
Plots or contrivances were forged in such Meetings, where Women, Child
persons of all Ages and Sexes promiscuously Assemble; nay, the Pra
rather seems a security against such Plots.

Wherefore my Opinion is, that this Branch of the Act doth not reach
Defendants, as your evidence stands.

And for as much as this Branch is not Independant, but carries its influ
into the whole crime described by the Act, my Opinion is, the Defe
are wholly out of the reach of the Statute; yet lest you should doubt, o
Opinion be over-ruled herein, we will subjoyn the words following i
Act, and then examin whether they will further charge or acquit the De
dants.

[If any person or persons, &c. shall be present at any Conventicle, &c
der colour or pretence of any Exercise of Religion, in other manner tha
roring to the Liturgy and Practice of the Church of England.] po
an Advocate for the Informer may tell you, that the Clause supposes
Exercise of Religion can be real and sincere, but colourable and prete

ly, that is not performed in the very words of the Liturgy. To which I nſwer, that the ſubſequent words, **and practiſe of the Church**, give a clear ontradiction to ſuch a Paraphraſe, becauſe in all our publick Aſſemblies, en pray before and after Sermon, in other words than the Liturgie, and yet ot reputed criminal within this Act; but for your better ſatisfaction, it may em expedient we conſider how to conſtrue theſe words, **(in other manner** en according to the Liturgy.)

You know the Saviour of the World taught his Diſciples to Pray, *Mat.* 6.9. *After this manner therefore Pray ye, Our Father which art in Heaven.* You find many the Diſciples Prayers recorded in Scripture, *Act.* 1. 24. & 4. 23. and graouſly accepted of God, and yet you never read they uſed that Form, but other words agreeing for matter.

Now Sir, if theſe two Parallel Queſtions were put,

Did the Diſciples of Chriſt pray in any other manner than according to e Lords Prayer?

Did the Defendants pray in other manner than according to the Liturgy.

To the former of theſe, I know you will anſwer, that though the Diſcies did not uſe the form of words, yet their Prayers did accord with, or ere according to the Lords Prayer.

The ſame anſwer will neceſſarily ſerve to the latter, refering to the Liture, ſtill ſuppoſing your evidence offers no Accuſation againſt the Defendants yers diſſonant from the **Liturgie**, more than want of Form. Take this ther conſideration, that the Liturgy comprehends both the Epiſtles and ſpels, and all other portions of Scripture appointed to be read, and then us thus reaſon, whatſoever accords with the Scriptures, (part of the Ligy) accords with the Liturgy, and is not in other manner than according it. Upon the 18 of *July*, for the ſecond Leſſon, is to be read 1 *Tim.* 2. *I therefore that men pray every where, lifting up holy hands, without wrath and ting.* And upon the 30 of *June* is to be read *Eph.* 6. *Praying always with ſupplications in the Spirit*; ſo that all manner of Prayer, at what time or place ver, (if in the Spirit) is you ſee allowed by, and is not in any other man- than according to the Liturgy.

We therefore again conclude that your Evidence gives no indication that Defendants Exercise of Religion, was in other manner than according the Liturgy of the Church.

It now remains we conſider the laſt words, (and practiſe of the Church of gland.) Sir, I obſerve you gave the Informers a reaſonable caution, (ſay) if you ſhare the Defendants did Worſhip in other manner than accorg to the Liturgy and practiſe of the Church, it is requiſite to underſtand t the Liturgy is, what the Church is, and what its Practiſe is; it falls to ſhare to reſolve you. Of the Liturgy we have already diſcourſed, it reins w inquire of the Practiſe of the Church, and its impoſſible to know Practiſe till we reſolve this Queſtion.

Queſt.

Queſt. *What is the Church of* England *intended in this Statute?*

Solut. Sir, I need not tell you the Greek word for Church, its taken for any convention of men, as well Profane as Eccleſiaſtical, ſo the Profane Aſſembly in the 19 of *Acts* 32. is tranſlated from Εκκλησια Church, or *Eccleſia.*

But Sir, it is ſafe for you and me to give ſuch interpretations of words, as our own Laws and Eccleſiaſtical conſtitutious favour, of which *I* find but two notions of this word Church, (*viz.*) one in the Book of Cannons, and the other in the book of Articles, one of theſe I take to be intended in this Act, and we ſhall examine which;

That of the Cannon is in theſe words, [**Whoſoever ſhall affirm that the ſacred Synod of this Nation, in the Name of Chriſt, and by the Kings Authority Aſſembled, is not the true Church of England by Repreſentation, let him be Excommunicated.**

Sir, after what manner the Synod worſhipt God, or whether at all (in that Aſſembly) is wholly forreign to your knowledge and mine, neither do I find that your Informers accuſe the Defendants for worſhipping God in other manner than according to the Practice of the Synod, wherefore this ſenſe of the word Church I know you will Explode.

2. The other notion is in the book of the 39 Articles, where I find Article the 19, Church thus defined, [**The Viſible Church of Chriſt, is a Congregation of faithful men, in the which the pure word of God is Preacht, and the Sacraments duly Adminiſtred according to Chriſts Ordinance, in all things that of neceſſity are requiſite to the ſame.**] Sir, this Definition ſeems to carry in it a Morral and perpetual Reaſon, ſuch as no time or circumſtance can deface, and by a Synecdoche, or part for the whole, ſeem to tell you, that every ſuch congregation in *England*, is the Church of *England*, this was ſo in Queen *Maries* days, when the Proteſtants were outed the publick Oratories, and denied the uſe of their Liturgies, as in Queen *Elizabeths* days when reſtored to both. Now (ſeeing Liturgies are confeſſed not eſſentially neceſſary to a true Church) it would be enquired, whether the Defendants profeſſing the Faith, Doctrine and Worſhip of the Church of *England* as now eſtabliſhed, and denying their Worſhip to be in other manner than according to the Practice of the Church, and this in preſence of the Informers, who offer not the leaſt evidence to the contrary, you (being alſo upon your Oath) have not reaſon or charity to judge that theſe people are ſuch a Church as is before defined.

Now *I* am compelled to give my Opinion in the Affirmative, Thus far we have diſcuſt the Notion of a **Church** in the Law ſenſe; it remains that we now conſider it in the Notion and Opinion of ſome private Men, and we will ſuppoſe that by the Church of **England** is intended [**The Parochial Aſſemblies of Chriſtians uſing the Liturgy and Formes according to the Rubrick,**] and hence it may be inferred, that the Defendants exerciſing Religion without the Formes of the Liturgy, have done in other manner than according to the Practice of the Church.

Sir

Sir, I obſerved in your Letter you put a proper Queſtion to the Informers, *viz.* Whither they were preſent from the beginning to the end of the Exerciſe, whereunto they anſwered Negatively, and the Defendants not confeſſing ſuch Omiſſion: Now taking the former allowed *Axiom*, **Non eſſe, et non apparere idem eſt**; I muſt conclude.

It is not ſafe for you to Record this an Offence within this Statute upon this Evidence.

But Sir, if your Evidence had been full, (as poſſibly it may occur, in caſes that come before you in this kind) and that it ſhould be Sworn, that from firſt to laſt, the Common-Prayer was omitted; and let it be ſuppoſed, that the Prayers and Sermons are the ſame for matter with the Services done in our Churches; and you ſhould then Ask me, whether ſuch an Exerciſe be within this Act, as done in other **manner than according to the Practiſe of the Church.**

To which (beſides what I have already offered) let me further add,

Do the Parochial Miniſters Pray before and after Sermon without the Liturgy,

So do the Perſons we ſpeak of in the ſame manner.

Are our Miniſters Epiſcopally Ordained,

So are many of the Diſſenters.

Doth the Practice of their Churches allow of unordained men to Preach as Candidates, for Approbation?

The Practice of our Church will warrant unordained men (deſigning the Office) to Preach, *&c.* of which the Ancient Church-Hiſtories hath given Inſtances, as *Paul* and *Barnabas* two whole years before Ordination; *Origen* for ſome time, and was therein juſtified by Eminent Fathers of the Church, viz. *Alexander* Biſhop of *Jeruſalem*, and *Theocliſtus* Biſhop of *Ceſarea*. The like may be affirmed of *Evelpis* at *Laranda*, *Paulinus* at *Iconium*, *Theodorus* at *Cynada*. *

In our caſe the only queſtion ſeems to be, whither two Aſſemblies, Worſhipping in the ſame manner, with this only difference, that one performs more than an other, makes a real difference for manner; The degrees of more or leſs are not ordinarily eſteemed to difference mens actions; one Miniſter Preacheth an hour, an other half an hour; one reads a Homily, and other Preacheth his own Sermon, and we never accuſe them of defect in manner of their Exerciſe as differing from each other.

Thus Sir, I have given you my ſenſe of what you demanded, wherein *I* have exerciſed my faculty, not only in my particular Calling, relating to the Law, but in my general Calling, as a Chriſtian, though *I* know there wants not perſons of your quality that have judged otherways, and given Preſidents thereof: But *I* alſo know that upon Appeals at the Seſſions, in a neighbour County, the Appellants have been diſcharged upon ſome of the Reaſons here alledged; I ſuſpect the Penalty of your 100 l. may ſtick in your thoughts, though I think your danger little, yet *I* have ſo great reſpect for you

* Euſ. 6. cap.

you and your Family, to wish you so good Opticks, as to foresee future, as well as present dangers. *I* presume you have read the famous instances of two Persons of your quality, *Empson* and *Dudley* in *Henry* the sevenths days, they by colour of Penal Laws, (as this is) invaded the Property of the People in that Kings Reign, and in the next *Henry* the Eight, were beheaded at *Tower-Hill*, and the Informers were corrected by Stocks and Pillories throughout the Kingdom, as Examples to future Ages. For your own part Sir, Reckon your self to see well, when you borrow your Countries Eyes, and direct your Judgment by the Verdict of Juries, upon the Evidence of honest and credible Witnesses, of both which, just care ought to be had, first of Juries, that they be Empannel'd by the Impartial Sworn Officer the Law appoints; and secondly as to Witnesses, that they be of undoubted Credit, for seeing the third part of the Fines comes to their Pockets, unreasonable it is to admit of any but Persons of known Integrity for Witnesses.

Sir, Thus doing, you will secure both your own Reputation for Justice and Integrity, and also the Peace of all his Majesties Loyal Subjects; which will be according to the desire of

Your Humble Servant.

Phanatick R

The Justice of Peace, & yt Councellor at Law, ar both one Rogue; the Phanatick Foole, & yt Phanat Knaue, are both one Rascall.

FINIS.